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particular season may require. That no doubt was a case of a perpetual lease, but the reasons for the decision apply with equal strength to the ten years' lease in the present case. I fully concur in the rule of law laid down in the case just cited, and, following the principle contained in it, I set aside the decrees of the two lower Courts, and, allowing this appeal, I give a decree in favour of the plaintiff appellant. I cancel the lease dated the 24th of December, 1894, so far as it concerns an area of 144 bighas 7 biswas and 13 biswansis pukhta out of mahal Bangar of Chitaura Mohindinpur, and I direct that possession of that area be given to the plaintiff appellant by the dispossession of the defendant lessee. The plaintiff appellant will have his costs in this Court.

Appeal decreed.

REVISIONAL CRIMINAL.

Before Mr. Justice Aikman.

QUEEN-EMPRESS v. NIHAL CHAND.*

Act No. 1 of 1879 (Indian Stamp Act), section 61—Stamp—Promissory note—Person receiving an under-stamped promissory note not liable under section 61.

Under section 61 of Act No. I of 1879 the "person accepting" a promissory note not duly stamped is the person who executes such note as acceptor, not a person who merely receives the note. The mere receiver of an unstamped or insufficiently stamped promissory note is not as such liable to any penalty under this section either as principal or abettor. *Queen v. Gulam Husain Sahib* (1), *The Queen v. Nadi Chand Poddar* (2), *Empress v. Janki* (3) and *Empress v. Gopal Das* (4) referred to.

THIS was a reference made by the Sessions Judge of Saharanpur under section 438 of the Code of Civil Procedure. The facts of the case sufficiently appear from the judgment of the Court.

AIKMAN, J.—This is a case reported for the orders of this Court by the learned Sessions Judge of Saharanpur. It appears

* Criminal Revision No. 227 of 1898.

(1) I. L. R., 7 Mad., 71.

(2) 24 W. R., C. R., 1.

(3) I. L. R., 7 Bom., 82.

(4) Weekly Notes, 1883, p. 145.

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that two men, Makunda and Chanda, were indebted to one Nihal Chand. In payment of their debt they gave him a promissory note which was not duly stamped. Nihal Chand, it appears, sued in a Civil Court on the promissory note, and there the breach of the stamp law was discovered. The matter having been brought to the notice of the Collector, the prosecution of the makers of the note, as well as of Nihal Chand, was directed. This prosecution resulted in all three being convicted of the offence punishable under section 61 of the Indian Stamp Act, 1879. The Magistrate sentenced Nihal Chand to a fine of Rs. 35, or in default to 15 days' rigorous imprisonment.

As the offence of which Nihal Chand was convicted is an offence punishable with fine only, the imprisonment in default ought to have been simple—see sections 67 and 34 of the Indian Penal Code. This mistake the Magistrate himself subsequently discovered.

The learned Sessions Judge has submitted the case to this Court with a recommendation that the conviction of Nihal Chand should be set aside as illegal. In my opinion the learned Sessions Judge is right. The material part of the section under which Nihal Chand has been convicted runs as follows:—

“Any person drawing, making, issuing, endorsing or transferring or signing, otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating any bill of exchange, cheque or promissory note without the same being duly stamped shall for every such offence be punished with fine which may extend to five hundred rupees.”

The Magistrate has apparently looked on the word “accepting” here as equivalent to “receiving.” But, as was held in *Queen v. Gulam Hussain Saheb* (1) “the term ‘accepting’ in section 61 of the Stamp Act does not mean ‘receiving,’ but ‘executing as an acceptor.’” In the case *The Queen v. Nadi Chand Joddar* (2) JACKSON, J., observed:—“If an instrument called a

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promissory note or other document of that kind, and as such liable to the duty imposed by the Act, is not duly stamped, it appears to me that the person subject to penalty is the person who makes it, and not the person in whose favour it is made." That was a prosecution under section 29 of the Stamp Act then in force, namely, Act No. XVIII of 1869, which does not differ materially from section 61 of the present Act. It was there held that the person in whose favour a document not duly stamped is made, incurs the risk of being debarred from producing it in evidence, but does not render himself liable to penalties under the fourth chapter of the Act. It has been contended that in such cases a person who receives a document not duly stamped abets the commission of an offence under section 61; but, as was remarked in the case *Empress v. Janki* (1), "it is not abetment of the execution of an unstamped document to receive it, any more than acceptance of stolen property is abetment of theft." This case was followed in this Court in *Empress v. Gopal Das* (2). I think the view taken by the learned Sessions Judge is right. I quash the conviction of Nihal Chand for an offence under section 61 of Act No. I of 1879 and the sentence of fine imposed thereunder, and direct that the fine, or such portion of it as may have been paid, be refunded.

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APPELLATE CIVIL.

Before Mr. Justice Blair.

FATEH CHAND AND OTHERS (PLAINTIFFS) v. MANSAB RAI (DEFENDANT).
Civil Procedure Code, section 53—Verification of plaint—Plaint verified when in an incomplete state—Amendment of plaint.

The substantial portion of a plaint, consisting of the statement of the claim of the plaintiffs and the prayer, was written upon two sheets of plain paper and verified by the plaintiffs. Subsequently to the affixing of the plaintiffs'

* Second Appeal No. 376 of 1897 from a decree of Rai Shankar Lal, Subordinate Judge of Saharanpur, dated the 3rd March 1897, reversing a decree of Munshi Shiva Sahai, Munsif of Kairana, dated the 26th February 1896.

(1) L. L. R., 7 Bom., 82.

(2) Weekly Notes, 1888, p. 145.